

ARTICLE 36: PREMIUM COMPENSATION

DEFINITIONS

(See also Article 32, Work Schedules and Tours of Duty)

- 36.1 Basic work requirement: The number of hours, excluding overtime hours, an individual is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award (80 hours a pay period for full time employees).
- 36.2 Compensatory time off: Generally, the granting of time off instead of payment for an equal amount of time spent performing irregular or occasional overtime work. Under this Article, there are three kinds of compensatory time off:
- a. Regular compensatory time off;
 - b. Special compensatory time off for Foreign Service Officers; and
 - c. Special compensatory time off for religious observation.
- 36.3 FLSA: The Fair Labor Standards Act of 1938, as amended (20 USC 201, et seq.). FLSA applies to overtime work performed in the United States and in certain non-foreign areas only. A nonexempt employee is covered by the FLSA while an exempt employee is not covered by the FLSA. Nonexempt employees are usually covered by Title 5 premium pay and if so, must be paid the greater of the two overtime benefits. Under the FLSA, positions are designated on the SF-50, "Notification of Personnel Action" as either "exempt" or "nonexempt".
- 36.4 Overtime: Work performed beyond the basic work requirement that has been officially ordered and approved by an authorizing official.
- a. For an individual on a fixed work schedule, the work must be in excess of the individual's established number of hours on the day the overtime is performed.
 - b. For an individual on a flexible work schedule, the work must be in excess of the individual's scheduled work hours on the day the overtime is performed. Maxiflex and flexitime are flexible work schedules.
- 36.5 Irregular or occasional overtime: Overtime work that is not scheduled in advance as a part of an employee's regularly scheduled administrative workweek.

- 36.6 Regularly scheduled overtime: Overtime work that is scheduled in advance as part of an employee's regularly scheduled administrative workweek.
- 36.7 Premium pay: Additional pay authorized under chapter 55 of Title 5 of the United States Code, for overtime, night, holiday, or Sunday work, and for standby duty, or administratively uncontrollable work.
- 36.8 Special compensatory time off: Compensatory time off under section 412 of the Foreign Service Act for commissioned Foreign Service Officers in exchange for performing an equal amount of overtime work or holiday work which is officially ordered and approved. Special compensatory time off for Foreign Service Offices must be used within 26 weeks following the pay period in which it is earned. Special compensatory time will be used before annual leave unless the forfeiture of annual leave will occur.
- 36.9 Title 5: Unless otherwise specified, means the premium pay benefits provided by chapter 55 of Title 5 of the United States Code as opposed to the overtime benefits provided by the Fair Labor Standards Act.

AUTHORITY

- 36.10 Compensation for overtime work for Foreign Service administrative assistants and untenured Foreign Service Officers is provided under two statutes: Title 5 and the Fair Labor Standards Act. Some individuals may be covered by both, one, or none of these statutes. The definition and calculation of overtime work and pay are different under each statute as discussed in this Article.
- 36.11 Commissioned Foreign Service Officers are eligible for special compensatory time off for overtime work under section 412 of the Foreign Service Act. They are generally not entitled to overtime pay.
- 36.12 An individual's supervisor determines the need for, orders, and assigns all overtime, and determines the required qualifications of the individuals to perform the overtime.
- 36.13 The assignment or denial of overtime will not be made as a reward or penalty to an individual, but will be solely based on Agency needs and in accordance with the terms of this Agreement.
- 36.14 Overtime will be earned in increments of 15 minutes.
- 36.15 The Employer shall reimburse eligible individuals for parking and/or transportation

expenses that are in addition to costs normally incurred to commute to and from work and are incurred as a direct result of overtime.

MAXIMUM LIMITATION - INDIVIDUALS COVERED BY TITLE 5

36.16 An individual may receive premium pay under Title 5 only to the extent that the premium pay does not cause the employee's aggregate rate of pay (basic rate of pay plus premium pay) for any biweekly pay period to exceed the biweekly maximum payable basic rate of pay for a GS-15.

MAXIMUM LIMITATION - FLSA NONEXEMPT INDIVIDUALS

36.17 The Title 5 maximum limitation does not apply to overtime pay earned by a nonexempt employee under the FLSA. An employee who is covered by both Title 5 and the FLSA must be paid under the law that provides the greatest amount of compensation.

COMMISSIONED FOREIGN SERVICE OFFICERS

36.18 Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

ELIGIBILITY FOR OVERTIME PAY AND/OR COMPENSATORY TIME OFF

36.19 Individuals Occupying Positions Within the United States

- a. Foreign Service administrative assistants are FLSA nonexempt when assigned in the United States. Refer to 32-PM for guidance on determination of pay.
- b. Generally, untenured Foreign Service Officers are FLSA exempt and are therefore only eligible for overtime pay and/or compensatory time off under Title 5 (see section 36.19c).
- c. Under Title 5, whether an individual is entitled to overtime pay or compensatory time off for overtime work depends upon whether the overtime work was "regularly" scheduled or "irregular or occasional" and the salary of the individual.
 1. If the overtime is regularly scheduled (see Definitions, section 36.6), the

agency must pay the individual overtime pay.

2. If the overtime is irregular or occasional (see Definitions, section 36.5), and the individual's basic pay is at or below the maximum rate for GS-10, the individual may choose overtime pay or compensatory time off.
3. If the overtime is irregular or occasional, and the individual's basic pay is greater than the maximum rate for GS-10, the individual will only be granted compensatory time off.
- d. Commissioned Foreign Service Officers are eligible for compensatory time off in exchange for performing an equal amount of overtime work or holiday work which is officially ordered and approved under Section 412 of the Act. Commissioned Foreign Service Officers generally may not earn overtime pay. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

36.20 Individuals Occupying Positions Overseas

- a. Foreign Service administrative assistants posted abroad are Exempt under FLSA but may earn overtime pay or compensatory time off for the overtime that is officially ordered and approved. Whether an individual is entitled to overtime compensation or compensatory time off for the overtime work depends upon whether the overtime work was regularly scheduled or irregular or occasional and the salary of the individual (see section 36.19c). No premium pay or compensatory time will be earned for time spent at dinners, receptions, or parties, unless the supervisor ordered and approved the attendance at the function to perform work.
- b. Untenured Foreign Service Officers posted abroad are Exempt under FLSA but may earn overtime pay or compensatory time off for the overtime that is officially ordered and approved. Whether an individual is entitled to overtime pay or compensatory time off for the overtime work depends upon whether the overtime work was regularly scheduled or irregular or occasional and the salary of the individual (see section 36.19 c). No premium pay or compensatory time will be earned for time spent at dinners, receptions, or parties, unless the supervisor ordered and approved the attendance at the function to perform work.
- c. Commissioned Foreign Service Officers may earn special compensatory time

off for overtime work that is officially ordered and approved. Commissioned Foreign Service Officers generally may not earn overtime pay. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15. No premium pay or compensatory time may be earned for time spent at dinners, receptions, or parties.

SPECIAL COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVANCES

36.21 Special compensatory time off for religious observances is time off from work during the individual's basic workweek for religious reasons in exchange for performing an equal amount of irregular or occasional overtime work. All Foreign Service employees are eligible for special compensatory time off for religious observances.

TIME IN TRAVEL STATUS

36.22 Whenever possible, travel should be scheduled within an individual's regular work hours. However, situations may develop when travel away from the official duty station will be required outside of an individual's regular work hours.

36.23 Employees who are covered by Title 5, (administrative assistants posted abroad and untenured Foreign Service Officers), may earn overtime pay and/or compensatory time off under Title 5 for time spent in a travel status outside the employee's regular work hours if the hours of work have been ordered and approved and one of the following conditions is met:

- a. The individual is required to perform work while traveling.
- b. The travel immediately precedes or follows travel that requires the performance of work while traveling.
- c. The travel is carried out under arduous and unusual conditions.
- d. The travel results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official duty station.

36.24 Commissioned Foreign Service Officers may earn special compensatory time off under section 412 of the Act for time spent while in a travel status outside the

employee's regular work hours if the hours of work have been ordered and approved and one of the conditions discussed above has been met. Special compensatory time off for commissioned Foreign Service Officers under section 412 of the Act may be earned only to the extent that if the work performed were compensable under Title 5, the additional overtime payment would not cause the officer's aggregate rate of pay for any two week pay period to exceed the maximum payable rate of basic pay for GS-15.

HOLIDAY PAY

36.25 Foreign Service administrative assistants and untenured Foreign Service Officers who perform work which is officially ordered and approved on a U.S. holiday are eligible for holiday pay under Title 5. Commissioned Foreign Service Officers who perform work which is officially ordered and approved on a U.S. holiday are eligible for an equal amount of special compensatory time off under section 412 of the Act.

HOLIDAY PAY UNDER A FIXED WORK SCHEDULED

36.26 A full-time employee who is relieved or prevented from working on a day designated as a holiday (or an "in lieu of" holiday) by Federal statute or executive order is entitled to his/her rate of basic pay for the number of hours in the employee's compressed work schedule on that day.

36.27 If a holiday falls on a day during a part-time employee's scheduled tour of duty and he/ she is relieved or prevented from working on that day, the individual is entitled to his/her rate of basic pay for the number of hours he/she normally would have been scheduled to work that day.

HOLIDAY PAY UNDER FLEXIBLE WORK SCHEDULES (FLEXITIME OR MAXIFLEX)

36.28 Under a flexible work schedule, a full-time employee who is relieved or prevented from working on a day designated as a holiday or an "in lieu of holiday" by Federal statute or executive order is entitled to his/her rate of basic pay on that day for eight (8) hours.

36.29 If a holiday falls on a day during the tour of duty of an individual on a part-time flexible work schedule and the individual is relieved or prevented from working on that day, he/she is entitled to his/her basic rate of pay for the typical, average, or scheduled number of hours of work normally credited toward his/her basic work requirement. This may not exceed eight hours of pay.

NIGHT PAY

- 36.30 A Foreign Service administrative assistant or untenured Foreign Service Officer is entitled to night pay for regularly scheduled night work performed between the hours of 6:00 PM and 6:00 AM under Title 5. Commissioned Foreign Service Officers are not entitled to night pay. Employees covered by Title 5 on maxiflex who voluntarily schedule to work after 6:00 PM and prior to 6:00 AM are not normally entitled to night pay.
- 36.31 The supervisor must authorize night pay for any regularly scheduled overtime work ordered and approved in advance of the administrative workweek and performed between the hours of 6:00 PM and 6:00 AM.

PROCEDURES FOR ASSIGNMENT OF OVERTIME WORK

- 36.32 The supervisor will give an individual as much advance notice as possible in making overtime assignments, but the parties acknowledge that emergencies, operational exigencies, and unanticipated workload requirements may result in the supervisor's inability to give advance notice. However, individuals will be allowed reasonable time under the circumstances to make arrangements necessary to minimize personal hardship.
- 36.33 The supervisor will observe the following procedures when assigning overtime:
- a. Whenever possible, overtime will be assigned by seeking qualified volunteers within the work unit normally responsible for the task at hand.
 - b. If there are more than enough qualified volunteers, the individual with the greatest seniority, as determined by current continuous service in the Agency, is entitled to work the overtime.
 - c. In the event of a tie, then the volunteer with the greatest seniority in Federal service using the service computation date for leave is entitled to work the overtime.
- 36.34 In the absence of sufficient qualified volunteers within the work unit, the individual (among qualified individuals within the work unit) with the least seniority (as determined by the service computation date for leave) shall be selected.
- 36.35 Fully qualified individuals in training or on details may be considered for overtime in their regular work unit if they are reasonably available as to time, workload, and location.
- 36.36 The availability of other equally qualified individuals in the work unit will be considered if a selected individual claims hardship in a particular instance.